IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 33 OF 2003.

Mr. Narayan Gaonkar,
r/o H. No. 731, Badem,
Chapora. ... Applicant.

Versus

1. Mr. Dayanand Laxman
   @ Chandrakant Calangutkar,
2. Mr. Deelip Laxman @
   Chandrakant Calangutkar,
3. Mr. Anil Laxman @
   Chandrakant Calangutkar,
4. Mrs. Chandrawati Laxman
   @ Chandrakant Calangutkar,
   all r/o H. No. 133,
   Zarwado, Chapora.
5. State ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Miss S. Dessai, Advocate for the Applicant.

Mr. A.P. Lawande, Advocate for the Respondents 1 to 4.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 5/State.

Coram : P.V. HARDAS, J.

Date : 25th November 2003.

ORAL JUDGMENT.

This is a Criminal Revision Application, at the behest of the original complainant, assailing the correctness of the finding of acquittal, recorded by the Judicial Magistrate, First Class, 'B' Court, Mapusa, by Judgment, dated 10th October 2002, in Criminal Case No. 176/96/B. The non-applicants herein were the original accused in the aforesaid criminal case and were prosecuted for offences punishable under Sections 325, 504, 506 and 427 read with Section 34 of the Indian

Penal Code. The learned trial Court, by the Judgment impugned in the present revision, acquitted the accused on three grounds: (1) that apart from the evidence of P.W.1 Narayan Gaonkar/complainant, there was no corroborative evidence; (2) that the injuries sustained by P.W.1 Narayan, which were 11 in number, could be caused by a fall from a ladder and (3) alternatively, if it is held that the accused did cause the aforesaid injuries to P.W.1 Narayan, the injuries were caused by the accused in the exercise of their right to private defence.

2. The complainant has been required to approach this Court by this revision for a second time. The learned trial Court earlier by its Judgment, dated 18th September 2000, in Criminal Case No. 176/96/I/SR, had acquitted the non-applicants/accused for the aforesaid offences relying on the Judgment of the Apex Court in **Rajdev Sharma v. State of Bihar**, A.I.R. 1988 S.C. 3281. The evidence of the Medical Officer had then remained to be recorded. On a Criminal Writ Petition being carried to this Court, this Court by its Judgment, dated 18th September 2001, in Criminal Writ Petition No. 6 of 2001, had quashed and set aside the Judgment of the learned trial Court acquitting the respondents and had remitted the matter to the learned trial Court for decision afresh, after giving opportunity to the

prosecution to adduce the evidence of the witnesses, whose evidence could not be adduced earlier. The learned trial Court was then directed by this Court, after hearing the learned counsel for the parties, to decide the matter afresh. The learned trial Court, in pursuance to the directions of this Court, examined the Medical Expert and, by the Judgment impugned in the present revision, acquitted the respondents/accused. Hence, the present Criminal Revision Application, at the behest of the complainant.

3. A brief reference to the facts, as are necessary for the decision of this Criminal Revision Application, are stated hereunder:-

On 26th April 1996, at about 8.30 a.m., P.W.1 Narayan saw that accused nos. 1 and 2 had climbed on the mango tree situated in his property in Survey No. 395/6. He also noticed that, at that time, accused nos. 3 and 4 were standing beneath the mango tree. He then told the accused to descend from the mango tree and it is alleged that the accused abused him in filthy words and they also challenged his title. At that time, one of the accused came and assaulted him with a wooden rib on his leg and on the other parts of his body. Thereafter, it is alleged that accused nos. 1 and 2 climbed down from the tree and also participated in the

assault alongwith accused nos. 3 and 4. Due to assault on P.W.1 Narayan, he fell on the ground. He suffered 11 injuries, which included a compound fracture on the left leg. The accused are also alleged to have threatened P.W.1 Narayan with dire consequences. The prosecution in support of its case examined 9 witnesses, which included the complainant. The accused in their defence also examined 4 witnesses and produced certain documents alongwith their statements under Section 313 of the Code of Criminal Procedure.

4. The learned trial Court, on appreciation of the evidence, acquitted the respondents/accused for the reasons, which have been enumerated above. The learned trial Court while recording a finding that the evidence of P.W.1 Narayan is not corroborated, has not recorded a finding as to whether the evidence of P.W.1 Narayan suffered from such intrinsic infirmities, which necessitated the Court to seek corroboration to the solitary testimony of P.W.1 Narayan. The law, as has been settled by the various Judgments of the Apex Court, is that conviction can be based on the uncorroborated testimony of a solitary witness, provided the testimony of the solitary witness inspires the confidence of the Court, so as to make it acceptable, and, there are no inherent infirmities in the evidence of the solitary witness. However, if the evidence of the solitary

witness does not inspire the confidence of the Court, the Court may look for corroborative evidence. In the present case, P.W.1 Narayan, apart from being a solitary witness, is also an injured witness. This aspect has gone completely unnoticed and, therefore, according to me, the learned trial Judge ought to have examined whether the evidence of P.W.1 Narayan is required to be corroborated and whether a conviction could be based on the solitary evidence of the injured witness.

5. The learned trial Court, while acquitting the accused, has curiously recorded an alternate finding. The learned trial Court, relying on the evidence of P.W.7 Dr. Vasco Teles, has recorded a finding that the injuries suffered by P.W.1 Narayan could be sustained by fall from a ladder. The learned trial Court has then recorded a finding in the alternate that, in the event it is established that the prosecution has proved that the injuries have been inflicted by the accused, the accused may have inflicted the injuries in their exercise of private defence. Such alternate finding is wholly unsustainable. The learned trial Court has also relied on the contents of a non-cognizable complaint, alleged to have been filed by the original accused no. 3, for contradicting the prosecution case. This case, therefore, squarely falls within the parameters laid down by the Apex Court in **K. Chinnaswamy Reddy v.**

State of Andhra Pradesh and another, A.I.R. 1962 S.C. 1788. This is a case of exceptional nature, which would require interference by this Court in setting aside the acquittal, which is based on a Judgment which is wholly unsustainable.

6. Since there is a statutory bar which inhibits the conversion of acquittal into one of conviction, at the behest of the complainant, the only remedy is to remand the matter to the learned trial Court for de novo trial. Mr. Lotlikar, the learned senior counsel appearing on behalf of the applicant and Mr. Lawande, learned counsel appearing on behalf of the respondents 1 to 4, have very fairly stated that a de novo trial would consume further time and, since the offence is of the year 1996, the complainant and the accused would be prejudiced by the delay, which would be occasioned in recording the evidence de novo. Both the learned counsel, therefore, very fairly state that the learned trial Court be directed to render a Judgment by appreciating the evidence of the witnesses, who have already been examined, and there is no necessity for examination of the witnesses afresh.

7. In view of this, the Judgment impugned in the present revision is, hereby, quashed and set aside and the matter is remitted to the learned trial Court for

decision afresh, on the basis of the evidence which is already on record. It is needless to add that the learned trial Court shall not be influenced by any of the observations made by this Court in its Judgment. The trial Court shall appreciate the evidence and pronounce the Judgment within 2 months from the receipt of the record and proceedings from this Court.

8. The Criminal Revision Application is, accordingly, allowed. Record and Proceedings be remitted to the trial Court. Parties to appear before the trial Court on 9th December 2003, at 10.00 a.m..

(P.V. HARDAS)
JUDGE.

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